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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,154	11/21/2003	Atchara Chaiyawat	US 60SI1996-2	2126

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04/12/2005

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EXAMINER

HOWARD, SHARON LEE

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 04/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,154

Applicant(s)

CHAIYAWAT ET AL.

Examiner

Sharon L. Howard

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18 and 20-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18,20-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

Receipt of the amendment and the remarks filed on 12/20/04 have been acknowledged.

Claims 18,20-35 are pending.

Claim Rejections - 35 USC § 103

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18,20-35 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Kilgour (U.S. Patent No. 5,760,116).

Kilgour teaches colored cosmetic compositions known in the art for having improved spreadability and substance (see abstract), wherein the compositions comprises a silicone gel consisting of a gel which is formed by the hydrosilylation product of a linear alkenyl stopped polyorganosiloxane and a resin (col.5, lines 35-67, bridging col.6, lines 1-51). Kilgour also discloses a process for dispersing a silicone gel comprising a hydrosilylating a linear alkenyl stopped polyorganosiloxane (col.4, lines 36-67) with a resin, in the presence of a first silicone thereby forming a gel and mixing

Art Unit: 1615

said gel with a second silicone (col.5, lines 7-31). Kilgour teaches that the compositions are known to be useful in color cosmetics such as lipsticks, blushes, foundations, makeup and mascara (col.8, lines 48-58) which defines a colored material. There is no criticality in the selection of the particular silicone gel since the prior art teaches colored cosmetic compositions consisting of a silicone gel mixed with a second silicone and a colored material.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of the Kilgour reference, because Kilgour teaches a cosmetic composition comprising a silicone gel mixed with a second silicone, and a colored material consisting of color cosmetics such as foundations, makeup, lipsticks and mascara, known for the purpose of improving spreadability.

The expected result would be a cosmetic composition comprising a silicone gel mixed with a second silicone and a colored material .

Response to Arguments

Applicant's arguments filed 12/20/04 have been fully considered but they are not persuasive. Applicant argues that the Kilgour reference nowhere teaches or discusses transfer resistance in colored cosmetic compositions, it is totally silent regarding transfer resistance.

In response to applicant's argument that the Kilgour reference does not teach transfer resistance, the Kilgour reference teaches a composition which have the same scope. It is the position of the examiner that the prior art has the same degree of transfer resistance, and the burden is shifted to applicant to show that the reference

does not teach transfer resistance..Therefore, for the reasons above, the claims would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon L. Howard whose telephone number is (571) 272-0596. The examiner can normally be reached on 9:00am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sharon Howard
April 7, 2005

THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600